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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Qualcomm Incorporated)	
Petition for Declaratory Ruling)	DA 00-219
Giving Effect to the Mandate)	
of the District of Columbia)	
Circuit Court of Appeals)	
)	
)	
Service Rules for the 746-764 and)	
776-794 MHz Bands and Revisions)	WT Docket No. 99-168
to Part 27 of the Commission's Rules)	

COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") hereby submits these comments in the above captioned proceeding.^{1/} AT&T opposes Qualcomm Incorporated's ("Qualcomm's") request that the Commission award Qualcomm the Block D license in Economic Area Grouping 3 ("EAG 3") identified in the UHF Order. The award of this spectrum to Qualcomm would severely disrupt the UHF auction and eliminate many of the potential efficiencies the Commission hopes to realize. Moreover, other more appropriate spectrum will be available in the near future.

In its UHF Order, the Commission specifically recognized the importance of enabling wireless carriers to bid on and obtain significant aggregations of spectrum in the Channel 60-69 band.^{2/} The Commission created two sets of six EAG licenses instead of adopting MEAs or EAs

^{1/} Public Notice, Wireless Telecommunications Bureau Seeks Comment on Qualcomm Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to Ruling of U.S. Circuit Court of Appeals, DA 00-219, WT Docket No. 99-168 (rel. Feb. 4, 2000).

^{2/} Service Rules for the 746-764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, First Report and Order, WT Docket No. 99-168, FCC 00-5, ¶¶ 55, 59 (rel. Jan. 7, 2000) ("UHF Order").

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because it recognized the “overall advantages” that would be created by larger-sized band areas, including the “optimum opportunity” that carriers would have to build a nationwide footprint or acquire both licenses in a particular region.^{3/} If the Commission were to award one of these EAGs to Qualcomm, it would restrict the potential uses for the channel 60-69 band by preventing any bidder from obtaining 30 MHz on a nationwide basis. In essence, grant of Qualcomm’s petition would substitute government fiat for market forces in determining which business plans proceed. It would also seriously disadvantage consumers in EAG 3 by artificially dictating what advanced wireless services they may receive.

Other, more appropriate, licenses are available for the Commission to award to Qualcomm. For example, the C and F blocks contains “appropriate license[s],” award of which would be “commensurate with the spectrum [Qualcomm] had requested in its application.”^{4/} As Qualcomm points out, additional C and F block licenses are being made available.^{5/} These licenses are in the same band as the Miami authorization Qualcomm initially sought, and thus are even more comparable to that authorization than the UHF spectrum it now seeks. While the FCC’s cancellation of these licenses has been challenged, the Commission has announced its intent to move forward with the reauction on July 26, 2000.^{6/}

^{3/} UHF Order ¶ 59. The Commission has even proposed unique bidding rules and nationwide bid withdrawal procedures for the Channel 60-69 auction in order to permit the creation of a 30 MHz nationwide license. Public Notice, Auction of Licenses in the 747-762 and 777-792 MHz Bands Scheduled for May 10, 2000, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues, DA 00-43, 9 (rel. Jan. 10, 2000).

^{4/} Qualcomm Inc. v. FCC, 181 F.3d 1370, 1376 (D.C. Cir. 1999).

^{5/} Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals 14 (Jan. 28, 2000) (“Qualcomm Petition”).

^{6/} Public Notice, Auction of C and F Block Broadband PCS Licenses, Notice of Auction Scheduled for July 26, 2000, DA 00-49 (Jan. 12, 2000). Cf. Committee to Save WEAM v. FCC, 808 F.2d 113, 119 (D.C. Cir. 1986) (appellant not entitled to maintenance of the status quo pending review); Evans v. FCC, 113 F.2d 166, 169 (D.C. Cir. 1940) (appeal does not foreclose the right of others, not parties to it, to apply for the same facilities or to be heard without prejudice resulting from the pending appeal).

Contrary to Qualcomm's argument that "a PCS license, awarded now" is not comparable to the Miami license it originally sought, the C and F blocks and UHF spectrum are essentially fungible.^{7/} The discounted award of a C or F block license will give Qualcomm the same opportunity to deploy its HDR technology as the grant of UHF spectrum. Qualcomm argues that the "fifth" PCS license in a market cannot be as valuable as the first, but that argument is wholly without merit. It is irrelevant to considerations of comparability and value that the authorization granted to Qualcomm is the fifth in a particular band. The value of the spectrum is a reflection of the use to which it will be put, and Qualcomm will still be "first to the market" with the "pioneering" services it plans to provide.^{8/} Most importantly, by awarding Qualcomm a PCS license rather than the requested UHF license, the Commission would satisfy the court's mandate in Qualcomm v. FCC without destroying the band plan that it has developed for the Channel 60-69 auction.^{9/}

CONCLUSION

For the foregoing reasons, the Commission should deny Qualcomm's request that it be awarded a license out of the spectrum designated for the Channel 60-69 auction.

^{7/} See Comments of AT&T Corp., Auction of Licenses in the 747-762 and 777-792 MHz Band Scheduled for May 10, 2000, Comments Sought on Reserve Prices or Minimum Opening Bids and other Auction Procedural Issues, WT Docket No. 99-168, DA 00-43, 2 (Feb. 2, 2000).

^{8/} Qualcomm Petition at 15.

^{9/} Likewise, the Commission has indicated that it will be allocating and auctioning other equally "appropriate" spectrum in the near future. See, e.g., Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement, FCC 99-354, ¶¶ 2, 14 (rel. Nov. 22, 1999). For example, a license in the Advanced Fixed and Mobile Communications Service band may be even more appropriate for the type of service Qualcomm claims it will offer. See id. at ¶ 23.

Respectfully submitted,

AT&T CORP.

Howard J. Symons
Sara F. Seidman
Ghita Harris-Newton
Mintz, Levin, Cohn, Ferris, Glovsky &
Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Of Counsel

February 18, 2000

Douglas I. Brandon / zhr
Douglas I. Brandon
Vice President - External Affairs
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 223-9222

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CERTIFICATE OF SERVICE

I, Ghita Harris-Newton, hereby certify that on this 18th day of February 2000, I caused copies of the attached "Comments of AT&T Corp." to be served via hand delivery or first class mail* upon the following:

Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW B204
Washington, DC 20554

Hon. William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW, Room 8-B201
Washington, DC 20554

Hon. Susan Ness
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-B115
Washington, DC 20554

Hon. Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Hon. Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

Hon. Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, SW, Room 8-C302
Washington, DC 20554

Thomas Sugrue
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C252
Washington, DC 20554

Amy Zoslov
Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW, Suite 4-A760
Washington, D.C. 20554

Kathleen O'Brien Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW, Room 3-C255
Washington, DC 20554

Nicole Oden
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
445 Twelfth Street, SW, Room 4-B551
Washington, D.C. 20554

Kevin J. Kelley*
Senior Vice President, External Affairs
QUALCOMM Incorporated
2000 K Street, NW, Suite 375
Washington, DC 20006

Veronica M. Ahern*
Nixon Peabody LLP
One Thomas Circle, NW, Suite 700
Washington, DC 20005

Office of Media Relations
Public Reference Center
445 Twelfth Street, SW
Suite CY-A257
Washington, D.C. 20554

International Transcription Service, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036


Ghita Harris-Newton